

AMENDMENT UNDER 37 C.F.R. § 1.111

U.S. Application No. 10/710,456

Attorney Docket No. 27475.05432

REMARKS

I. Introduction

In the Office Action, claims 34-39 and 42-66 were examined. Claims 34-38, 42-43, 45-50, 52 and 54-66 are rejected under prior art, while claims 39 and 44 are acknowledged to contain allowable subject matter. Furthermore, claims 51 and 53 are allowed.

By way of this Amendment, claims 34, 39, 44, 51, 53 and 63 are amended; claims 35-36, 42-43, 54-55 and 65 are canceled (without prejudice or disclaimer); and claims 67-76 are added. Accordingly, claims 34, 37-39, 44-53, 56-64 and 66-76 are currently pending in the application.

II. Claim Rejections Under 35 U.S.C. § 102(b)

A. Claims 34-38, 42-43, 45-50, 54, 56-57, 59, 61 and 63-66

Claims 34-38, 42-43, 45-50, 54, 56-57, 59, 61 and 63-66 stand rejected under § 102(b) as allegedly being anticipated by U.S. Patent No. 4,220,322 to Hobday (Hobday), which is expired. Claims 34 and 63 are the independent claims among these rejected claims. As an initial matter, rejected claims 35-36, 42-43, 54 and 65 are canceled without prejudice or disclaimer.

Claim 34 is amended to further clarify that “at least a portion of said handle assembly is operable to be positioned above and between said first side and said second side of said exposed tub wall when said first arm assembly contacts said first side and said second arm assembly contacts said second side.” Claim 63 is similarly amended. In this manner, the handle assembly can, for example, function as a load-bearing support structure. To the contrary, Hobday discloses a handle assembly (i.e., hand grip unit 13) that is located such that no portion of the handle assembly is operable to be positioned above and between a first side and a second side of an exposed tub wall should the outer leg 2 and the inner leg 4 of the C-shaped body 1 contact the respective first and second sides of the exposed tub wall.

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For at least these exemplary reasons, claims 34 and 63 are not anticipated by Hobday. Consequently, claims 37-38, 45-50, 56-57, 59, 61, 64 and 66 are patentable over Hobday at least by virtue of their dependency.

B. Claims 34, 37-38, 42-43, 45-48, 50, 52, 54, 56-57, 59, 61 and 63-66

Claims 34, 37-38, 42-43, 45-48, 50, 52, 54, 56-57, 59, 61 and 63-66 stand rejected under § 102(b) as allegedly being anticipated by U.S. Patent No. 4,893,801 to Flinn (Flinn), which is expired. Claims 34 and 63 are the independent claims among these rejected claims. As an initial matter, rejected claims 42-43, 54 and 65 are canceled without prejudice or disclaimer.

As noted above, claim 34 is amended to further clarify that “at least a portion of said handle assembly is operable to be positioned above and between said first side and said second side of said exposed tub wall when said first arm assembly contacts said first side and said second arm assembly contacts said second side.” Claim 63 is similarly amended. In this manner, the handle assembly can, for example, function as a load-bearing support structure. In Flinn, like in Hobday, the handle 26 and/or the movable lever arm 28 of Flinn are located such that no portion thereof is operable to be positioned above and between a first side and a second side of an exposed tub wall should the stationary jaw 14 and the movable jaw 16 of the hand-held clamp 10 contact the respective first and second sides of the exposed tub wall.

For at least the above exemplary reasons, claims 34 and 63 are not anticipated by Flinn. Consequently, claims 37-38, 45-48, 50, 52, 56-57, 59, 61, 64 and 66 are patentable over Flinn at least by virtue of their dependency.

III. Claim Rejections Under 35 U.S.C. § 103(a)

A. Claims 55, 58, 60, 62

Claims 55, 58, 60 and 62 stand rejected under § 103(a) as allegedly being unpatentable over Hobday. As an initial matter, rejected claim 55 is canceled without prejudice or disclaimer. It is respectfully submitted that claims 58, 60 and 62 are not rendered obvious by the Examiner's proposed modifications of Hobday, at least by virtue of their dependency from independent claim 34 as described above.

B. Claims 35-36

Claims 35-36 stand rejected under § 103(a) as allegedly being unpatentable over Flinn in view of Hobday. Claims 35-36 are herein canceled without prejudice or disclaimer.

C. Claims 55, 58, 60 and 62

Claims 55, 58, 60 and 62 stand rejected under § 103(a) as allegedly being unpatentable over Flinn. As an initial matter, rejected claim 55 is canceled without prejudice or disclaimer. It is respectfully submitted that claims 58, 60 and 62 are not rendered obvious by the Examiner's proposed modifications of Flinn, at least by virtue of their dependency from independent claim 34 as described above.

IV. Allowable Subject Matter

Claims 51 and 53 are allowed. Claims 51 and 53 are amended to return these claims to dependent form. It is respectfully submitted that claims 51 and 53 are patentable over the applied art, at least by virtue of their dependency from independent claim 34 as described above.

Claims 39 and 44 are acknowledged to contain allowable subject matter. Claim 39 is rewritten in independent form to incorporate all of the features of the base claim except the limitation of "wherein said handle assembly includes a first handle and a second handle," as the

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Examiner withdrew his previous indication that this limitation was patentable over the applied art. It is respectfully submitted that amended claim 39 is allowable at least by virtue of the limitations recited in claim 39 prior to its amendment. Claim 44 is rewritten in independent form, thereby placing claim 44 in condition for immediate allowance.

V. New Claims

New claims 67-76 are added by this Amendment. It is respectfully submitted that no new matter is introduced by way of these amendments. It is respectfully submitted that new claims 67-74 are patentable over the applied art at least by virtue of their dependency from independent claim 63.

Furthermore, new claim 75 recites that “said handle assembly is discrete and fixed relative to said ratcheting mechanism.” New claim 76 has similar limitations. It is respectfully submitted that claims 75 and 76 are patentable over the applied art at least by virtue of these limitations which are not disclosed or suggested in the applied art.

VI. Conclusion

In view of the above, entry and consideration of this Amendment and allowance of claims 34, 37-39, 44-53, 56-64 and 66-76 are respectfully requested. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is invited to contact the undersigned attorney at the telephone number listed below.

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The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 03-0172. Please also credit any overpayments to said Deposit Account.

Respectfully Submitted,

Billy C. Raulerson

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Billy Carter Raulerson
Reg. No. 52,156
(614) 621-7781